

Douglas A. Ducey
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Brian Mach, O.D.
President

Michael Lamb, O.D.
Vice President



Arizona State Board of Optometry

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**FINAL MINUTES FOR REGULAR MEETING
MAY 1, 2015 SCHEDULED TO COMMENCE AT 9:00 A.M.**

Board Members

Brian Mach, O.D., President
Michael Lamb, O.D., Vice-President
Marla Husz, O.D.
John Chrisagis, O.D.
Mark Peller, O.D.
George A. Evanoff, Public Member
Blake Whiteman, Public Member

Staff:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

Legal Counsel:

Mona Baskin, Assistant Attorney General

A. CALL TO ORDER:

Dr. Mach

Dr. Mach called the meeting to order at 9:01 a.m.

B. ROLL CALL:

Ms. Hollins

Board Members Present:

Brian Mach O.D., President
Michael Lamb O.D., Vice President
John Chrisagis, O.D.
Marla Husz, O.D.
Mark Peller, O.D.
George A. Evanoff, Public Member

Board Members Absent:

Blake Whiteman, Public Member

Legal Counsel:

Mona Baskin, Assistant Attorney General

Staff Present:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Mach

Dr. Mach reported a COPE policy change to its policies for instructor qualification, distance learning, and credit hours; The NBEO released an available testing procedure through ARBO to aid in disciplinary actions. Information is available on ARBO's website at www.arbo.org.

D. INFORMAL INTERVIEW:

9:00 a.m.

1. Lawrence Stern, O.D. IR#201502

Allegation: Optometrist failed or refused to correct problem; failure to reply to patient letter requesting response; misdiagnosis of glaucoma; improper treatment

This case was continued from the November 21, 2014 meeting at which time the Board moved it to informal interview to further discuss the matter. Dr. Stern was present with his counsel Mr. Kurt Goering.

Dr. Mach opened up the informal interview, witnesses were sworn in, and the Board began questioning Dr. Stern as to his experience treating glaucoma patients. Dr Mach questioned Dr. Stern regarding why Non-contact Tonometer ("NCT") was used instead of the Goldmann Tonometer. Dr. Peller also noted that Dr. Stern had submitted an outdated Journal article support the QID dosage prescribed to the patient. Dr. Stern was questioned as to whether or not he checked the patient's ocular pressures prior to initiating treatment. On August 21, 2013, Dr. Stern stated in the patient chart that the patient came in with infection so he started her on Pred Forte and Cipro for the infection. The records did not reflect that pressures were taken at that time. Dr. Lamb asked if Dr. Stern was aware of the Journal article prior to the complaint coming before the Board; Dr. Stern stated he was not. Dr. Lamb felt that Dr. Stern presumed glaucoma based on NCT reading which is not the standard of care, and pressures taken on the Goldman tonometer were lower. Dr. Stern stated the patient refused to pay for further treatment in order to properly diagnose a condition of open angle glaucoma. Dr. Lamb questioned Dr. Stern as to why he followed the very uncommon process of NCT instead of using the standard of care Goldman tonometer. Dr. Mach asked Dr. Stern where the treatment of symptoms for glaucoma was and did Dr. Stern know how to treat high pressures from glaucoma or steroid induced high ocular pressure. No other record showed glaucoma or high pressures. The Board asked Dr. Stern if he felt that Xalatan four times a day causes inflammation of the cornea. Dr. Stern replied only as a mitigating factor. On April 30, 2014 the patient inquired about distance glasses with no correction as the patient stated at that time she did want to pay any further monies for glasses. Patient inquired with Dr. Stern why he did not refer her to a glaucoma specialist when he suspected she had glaucoma. On February 4, 2015 the patient had a follow-up to continue testing for glaucoma however the patient still does not have evidence of glaucoma. Mr. Goering responded to the Board's questioning and asked the patient if she had received a refund from Dr. Stern of payments for Gonioscopy. The patient stated she didn't know what Gonioscopy is and cannot answer the question. Mr. Goering showed the patient a document from March of 2014 and asked patient if she canceled the appointment or just did not show up, intending to address the issue of the requested refund. The patient stated she cancelled the appointment. On April 30, 2014 the patient asked Dr. Stern to refer her to glaucoma specialist. Mr. Goering asked Dr. Stern if he was aware of the findings of the article even though he wasn't aware of the article itself. Dr. Stern stated he was not. Mr. Goering asked Dr. Stern why a credit was not issued to the patient. Dr. Stern claims the patient was a no-show and was therefore not

entitled to a refund. The Board asked Dr. Stern if he was aware of the current warnings for use of Xalatan and that the information was available on drug manufacturer's website; Dr. Stern was asked if he accessed the website to review the warnings. Dr. Stern stated he had not. On June 26, 2013, the medical record shows billing codes for two contact lens exams and that the patient was billed for bifocal contact lenses when a sclera lens was what Dr. Stern was intending.

Closing comments from Mr. Goering: He felt there are a number of questions and issues that focus on the prescription of Xalatan, the diagnosis of glaucoma and the lack of testing. Mr. Goering believes that the line of questioning was outside the scope of allegations listed in the request for informal interview. Mr. Goering stated efforts were made by Dr. Stern to respond but was barred by the patient.

The Board had concern about the initiation of treatment without enough information to begin this type of treatment. The treatment was aggressive rather than conservative even though there is little risk to a patient with the pressure of 20 with no nerve damage. IOPs were not relied on. Patient was treated for a long period of time, therefore it is hard to determine at what point time the glaucoma was present, if at all. Dr. Husz disagrees with the treatment of condition by Dr. Stern as proper procedure/patient care was not followed in this case. Dr. Peller has issues with Xalatan being prescribed four times a day and the standard of care not being met as no pressures were taken and/or the testing was not done. No repeated visual fields or IOPs were done.

FINDINGS OF FACT: (Allegation #1): Dr. Stern failed to properly diagnose and treat glaucoma, follow up with the patient and properly refer the patient to a glaucoma specialist.

CONCLUSIONS OF LAW: Based on the Findings of Fact, the Board finds violation of R4-21-304 for not taking IOP on April 20, 2014. The Board also finds violation of R4-21-305 due to not documenting IOP's if they were taken. The Board also finds violation of A.R.S. §1701(8)(f) Gross negligence, repeated or continuing acts of negligence or incompetence in the practice of optometry for improperly prescribing Xalatan medication.

MOTION: Dr. Lamb moved to accept the conclusions of law for violation of R4-21-304 for not taking IOP on April 20, 2014 and accepting the Findings of Fact for allegation #1; Dr. Stern failed to properly diagnose and treat glaucoma, follow up with the patient and properly refer the patient to a glaucoma specialist. Dr. Peller seconded the motion.

The motion was withdrawn prior to the vote as counsel informed the Board it could not consider the April 20, 2014 treatment date as it was not part of the original motion when the Board moved the case to Informal Interview.

The Board went into Executive Session for the purpose of legal advice at 10:20 a.m.
The Board reconvened Regular Session at 10:42 a.m.

SECOND MOTION: Dr. Lamb moved to accept the Findings of Fact and Conclusions of Law for allegation #1; Dr. Stern failed to properly diagnose and treat glaucoma, follow up with the patient and properly refer the patient to a glaucoma specialist and issue a Letter of Concern for violation of A.R.S. §32-1701(8)(f) and R4-21-304 for failure to conform to community standards regarding diagnosis and treatment of the glaucoma; to include a non-disciplinary order for eight (8) Board pre-approved Continuing Education (“CE”) in the area of diagnosis and treatment of glaucoma, to be completed within six (6) months from the date of this Order; and provide Board Staff with satisfactory proof of attendance upon completion. The CE hours shall be in addition to the hours required for biennial renewal of Respondent’s optometry license. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 5-1. Dr. Peller voted no.

2. Nainesh Bhakta, O.D. IR#201503

Allegation: Optometrist failed to sign off on patient files after resigning from the position

This complaint was continued from the January 16, 2015 Board meeting where Dr. Bhakta was offered a Consent Agreement and Order which he did not sign, causing the matter to move to informal interview for further discussion. Dr. Bhakta was present without counsel.

Dr. Mach opened up the informal interview, witnesses were sworn in and the Board began questioning Dr. Bhakta in this matter. Dr. Bhakta presented his case to the Board stating that he was locked out of the Electronic Medical Records system and that he does not have a contractual agreement to give a 30-day notice when leaving the employ of the company. Dr. Bhakta stated that since the initial review of the complaint, he has learned a lesson from the Board regarding the importance of completing records. Dr. Husz asked Dr. Bhakta that if he knew he was resigning, why had he not signed the records at that time. Dr. Bhakta stated it was due to a pay issue. He said he did not return equipment so the company held his paycheck to pay off the equipment. K.M., Administrator of the clinic was present and informed the Board that she was responsible for ensuring that the practitioners sign off on the records in a timely manner. Dr. Husz asked Dr. Bhakta again about time frame for when he was going to sign the charts. Dr. Bhakta stated he wasn't because he was owed money. Dr. Lamb asked if any of the 96 patients affected had glaucoma. Dr. Bhakta stated he didn't know but he figured a few of them did. Dr. Peller informed Dr. Bhakta that it is proper protocol to sign off on the records within a reasonable time frame, usually 24 to 48 hours from the dated of the exam. Dr. Bhakta informed the Board that he felt it was appropriate to not sign off on the records based on the fact that the company owed him money.

MOTION: Dr. Lamb moved to issue a Letter of Concern for violation of R4-21-305(A)(13) for not signing off on the records and to include an order for six (6) hours of additional continuing education in record keeping. Dr. Chrisagis seconded the motion.

DISCUSSION: Drs. Mach and Peller did not feel the letter of concern was sufficient enough for action in this matter and asked that the previous motion be withdrawn to issue a disciplinary action. Drs. Lamb and Chrisagis were amenable and withdrew their first and second to the motion for the Letter of Concern.

FINDINGS OF FACT: On or about July 31, 2014, Dr. Bhakta failed to properly complete and sign approximately 96 complainant charts in the Electronic Medical Records (“EMR”) from June 23, 2014 through July 31, 2014, before leaving his employment with MD24 House Call.

CONCLUSIONS OF LAW: The Board determined that, based on the evidence submitted in the complaint, discussion with and subsequent admission thereof, Dr. Nainesh Bhakta fell below the standard of care as established by the Optometric Practice Act. The conduct and circumstances described above constitutes a violation of, and grounds for disciplinary action pursuant to A.R.S. §32-1743(A)(11) (Violation of any of the rules adopted by the board pursuant to this chapter.) and A.A.C. R4-21-305(A)(13), Recordkeeping, A. A licensee shall create and maintain a complete and legible record of each examination including all findings. A licensee shall ensure that a complainant record is maintained for at least six years after the licensee's last contact with the complainant and includes:...Signature of licensee providing diagnosis, treatment, and disposition.

MOTION: Dr. Lamb moved to issue a written reprimand for failure to sign records pursuant to A.A.C. R4-21-305(A)(13) and support the findings of fact in allegation #1 of the informal interview request: On or about July 31, 2014, Dr. Bhakta may have failed to properly complete and sign up 96 patient charts in the electronic medical records from June 23, 2014 through July 31, 2014, for leaving his employment with MD24 Housecall, which constitutes a violation of ARS §32-1743(A)(11) and A.A.C. R4-21-305(A)(13) Dr. Chrisagis seconded the motion.

<u>Vote</u>		Brian Mach, O.D. President	Mark Peller Optometrist	Marla Husz Optometrist	John Chrisagis Optometrist	Michael Lamb, O.D. Vice President	George Evanoff Public Member	Blake Whiteman Public Member
YES	6	X	X	X	X	X	X	
NO	0							
ABSTAIN	0							
ABSENT	1							X

E. REVIEW, DISCUSSION AND VOTE ON INVESTIGATIVE REVIEWS/COMPLAINTS:

3. V. Craig Stuart, O.D. IR#201514

Allegation: Optometrist failed/refused to correct problem

This complaint was continued from the March 20, 2015 Board meeting as Dr. Stuart had not responded to the original complaint or submitted the records as required in the response. Ms. Whelan informed the Board subsequent requests for the records had been made however no response was received (to date).

MOTION: Dr. Husz moved to issue a Letter of Concern for failure to respond to a complaint or send pertinent patient exam records to the Board pursuant to A.R.S. 32-3217(C). Dr. Chrisagis seconded the motion.

VOTE: Motion passed 5-0. Dr. Lamb recused due to conflict of interest.

4. Cody Quarnberg, O.D. IR#201517

Allegation: Improper correction/fit of eyeglasses; Refusal to give a copy of the prescription.

Dr. Mach summarized this case as patient filed the complaint against Dr. Quarnberg however, Dr. Quarnberg was an associate in the office but never saw the patient. The patient was seen by other practitioners in Dr. Quarnberg's office.

MOTION: Dr. Peller moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

5. Jetal Patel, O.D. IR#201518

Allegation: Patient was referred to an ophthalmologist but scheduled with an optometrist.

Dr. Husz summarized the case as patient was seen by Dr. Patel and later seen by another optometrist. Patient was to be seen by an ophthalmologist but Southwestern Eye Center set her up with another optometrist instead. The patient was upset because she thought she was seeing an ophthalmologist.

MOTION: Dr. Husz moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

6. Kathy Badria, O.D. IR#201519

Allegation: Deceptive advertising statements; improper correction/fit of eyeglasses; refusal to give copy of a prescription; optometrist failed/refused to correct problem

Dr. Lamb summarized the case as patient came in for an eyeglass prescription and regular eye exam. The patient wanted the doctor to write an old prescription for eyeglasses that she already has. Dr. Badria informed the patient it was unethical for her to do so and proceeded with the exam in order to generate a new/current prescription. The patient was uncooperative and the prescription was not generated due to the fact that the doctor was unable to get proper readings for the prescription.

MOTION: Dr. Lamb moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

7. Scot Class, O.D. IR#201520

Allegation: Poor patient care; office dirty

Dr. Lamb summarized this case as patient filed the complaint against Dr. Class however; Dr. Class never saw the patient as the patient was seen by other practitioners in Dr. Class's office.

MOTION: Dr. Lamb moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

F. REVIEW, DISCUSSION, AND POSSIBLE ACTION TO OPEN A COMPLAINT:

8. Ljiljana Aleksic, O.D

This was a self-report action pursuant to A.R.S. §32-3208. The Board discussed the documentation submitted and took no action at this time.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING REGULAR LICENSE APPLICATIONS:

- 9. Butler, Jay
- 10. Lee, Jason
- 11. Taghayyor, Shahrokh

MOTION: Dr. Lamb moved to approve items 9 thru 11 for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

H. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING ENDORSEMENT APPLICATIONS:

- 12. Barthram, Sandra

13. Jones, Anna

MOTION: Dr. Lamb moved to approve item 12 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to approve item 13 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

I. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON APPROVAL OF CONTINUING EDUCATION AS PROVIDED BY A.R.S. §32-1704(D) and A.A.C. R4-21-210:

Fiscal Year 2015

	Continuing Education	Date	No. of hours requested
a.	HESLC, "Spring 2015 CE Event"	5/27/15	3 Regular
b.	Assoc. Retina Consultants, "New & Emerging Treatments and Advances in Retina"	3/26/15	1 Regular

MOTION: Dr. Husz moved to accept items a and b for approval. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

J. REQUEST FOR WAIVER OF HOURS OR EXTENSION OF TIME TO COMPLETE CONTINUING EDUCATION PURSUANT TO A.A.C. R4-21-212.

14. Catherine Hollenbach, O.D.

The Board discussed the request submitted by Dr. Hollenbach and determined that she met the requirements for consideration of a serious or disabling illness or other good cause delaying her from complying with the continuing education requirement for renewal of license.

MOTION: Dr. Lamb moved to grant the request for an extension to complete continuing education for renewal until June 30, 2015. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

K. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF BOARD MEETING MINUTES:

15. January 16, 2015 Regular Session Minutes

16. March 20, 2015 Regular Session Minutes

The Board tabled approval of January 16, 2015 and March 20, 2015 minutes until next meeting.

L. EXECUTIVE DIRECTOR'S REPORT:

17. Budget

18. Rules moratorium exception request update from Governor's Executive Order
19. Future agenda items
20. Future Board meeting dates

Ms. Whelan reported that 75% of the fiscal year has elapsed the Board's spending at 69.27%. The beginning cash balance is \$170,806 with an ending cash balance of \$191,563. The rules moratorium is still in effect; the Board directed staff to resubmit the rules package to the Governor's office. The rules package with required justification for exception was submitted to the Governor's office on April 1, 2015. The Board has not heard back yet as to whether not the package was approved. No future agenda items were requested. Future Board meeting dates will be a teleconference on Friday, June 26 at 11:30 AM (one week later than the originally scheduled June 19, 2015 Board meeting date) Friday, July 17, Friday, September 18, and Friday, November 20, 2015 to finish out the calendar year.

M. CALL TO PUBLIC:

Dr. Mach made a call to the public at 12:40 p.m. No one addressed the Board.

N. MOTION TO ADJOURN:

Dr. Peller moved to adjourn the meeting at 12:42 p.m. Mr. Evanoff seconded the motion.

The meeting was adjourned at 12:42 p.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date